

**IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 97B.4 and 97B.15, the Iowa Public Employees' Retirement System (IPERS) hereby amends Chapter 4, "Employers," Chapter 6, "Covered Wages," Chapter 9, "Refunds," Chapter 11, "Application for, Modification of, and Termination of Benefits," Chapter 13, "Disability for Regular and Special Service Members," Chapter 14, "Death Benefits and Beneficiaries," and Chapter 16, "Domestic Relations Orders and Other Assignments," Iowa Administrative Code.

The amendments implement certain provisions of 2010 Iowa Acts, House File 2518, which require immediate amendment or adoption of rules, and include: adding provisions for covered wage restorations for employees who bump into lower-paying jobs to avoid layoff, extending the sunset provision for bona fide retirement for licensed health care professionals, adding a provision to clarify presumption for disease contracted by a special service member while on duty, and clarifying that noncovered employment for National Guard members called to active state duty is not covered employment. Additional amendments implementing provisions of 2010 Iowa Acts, House File 2518, which will have deferred effective dates, will be proposed at a later date.

The amendments also accomplish the following:

- Eliminate a provision found at 495—subrule 6.5(8) that is already covered under the IPERS covered wage statute, Iowa Code section 97B.1A(26)(a)(1)(b), and other cafeteria plan rules that govern IPERS coverage for certain cafeteria plan payments referred to in the subrule as bounties (cash paid to employees in lieu of any coverage or family coverage under an employer's health care plan);
- Eliminate provisions regarding refunds to retired reemployed members' contributions that have been superseded by more beneficial statutory changes;
- Streamline the process for distribution of death benefits to multiple beneficiaries;
- Clarify calculations of death benefits under the required minimum distribution requirements; and
- Clarify that certain service purchases may or may not increase the numerator and denominator of the marital portion as used to determine the service factor under a domestic relations order.

In compliance with Iowa Code section 17A.4(3), IPERS finds that notice and public participation prior to implementation of these amendments are impracticable, unnecessary, and contrary to the public interest and that these amendments should be implemented immediately because these amendments are beneficial to members and necessary to the current and ongoing administration of the system.

IPERS also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and these amendments should be made effective upon filing with the Administrative Rules Coordinator on June 21, 2010, because the amendments confer benefits or are necessary to implement the system's governing statutes, or both.

Notice of Intended Action regarding these amendments is published herein as **ARC 8928B** to give interested persons notice of the changes and an opportunity to comment.

These amendments were prepared after consultation with IPERS administration, the Benefits Advisory Committee, and the Investment, Legal, Operations, and Benefits Divisions.

These amendments are not subject to requests for waivers; however, these amendments are subject to the normal IPERS appeal process.

These amendments are intended to implement Iowa Code sections 97B.4 and 97B.15 and 2010 Iowa Acts, House File 2518, sections 33, 36 and 41.

IPERS adopted these amendments on June 21, 2010.

These amendments became effective on June 21, 2010.

The following amendments are adopted.

ITEM 1. Amend rule 495—4.8(97B), introductory paragraph, as follows:

**495—4.8(97B) Additional employer contributions from employer-mandated reduction in hours or by the exercise of bumping rights to avoid a layoff.** ~~This~~ Effective January 1, 2009, this rule applies ~~only~~ to the restoration of covered wages reduced by an employer-mandated reduction in hours (EMRH) or the restoration of covered wages reduced by the exercise of bumping rights to avoid a layoff. It does not apply to reductions in base wages, reduced overtime wages, ~~reduced wages due to position changes,~~ permanent layoffs or other termination of employment situations. EMRH references in this rule shall apply both to situations involving the loss of covered wages due to employer-mandated reductions in hours and to the loss of covered wages due to the exercise of bumping rights to avoid a layoff.

ITEM 2. Amend subrule 4.8(1) as follows:

**4.8(1)** A member may restore the member's three-year average covered wage to the amount that it would have been but for an EMRH by completing the IPERS EMRH application form and related payroll deduction authorization and by filing the application and payroll deduction authorization forms with the employer. By so doing, the member agrees to pay the employee and employer contributions for all ~~EMRH wages retroactive to~~ reduced work hours and bumping reductions between January 1, 2009, ~~and all future EMRH wages through June 30, 2010~~ 2011.

ITEM 3. Amend subrule 4.8(9) as follows:

**4.8(9)** This rule applies to reductions in wages caused by an EMRH through June 30, ~~2010~~ 2011. An employer's collection of contributions from such wages shall terminate as of midnight, July 31, ~~2010~~ 2011. All completed EMRH forms and contributions collected under this rule must be forwarded to IPERS by a covered employer no later than August 15, ~~2010~~ 2011.

ITEM 4. Amend **495—Chapter 4**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 97B.4, 97B.9, 97B.14, 97B.14A, 97B.38, 97B.49A to 97B.49I, 97B.65 and 97B.70 and 2009 Iowa Acts, ~~House File 414~~ chapter 170, section 51, as amended by 2010 Iowa Acts, House File 2518, sections 36 and 41.

ITEM 5. Amend subrule 6.5(8) as follows:

**6.5(8) Bounties.**

*a.* ~~In~~ Effective prior to June 21, 2010, in some cases, an employer has a Section 125 plan with employer contributions, and what IPERS refers to as a bounty option. A bounty is an amount that may be elected by all employees, or by a subset of that group, such as employees with coverage under another health care plan, either in lieu of any coverage under the employer's health care plan, or in lieu of family coverage. A bounty is generally set at an amount that is less than the amount that would otherwise be available to purchase benefits under the Section 125 plan. IPERS does not treat bounties as covered wages. The uniformity and nondiscrimination principles described in subrule 6.5(4) do not apply to such benefits.

*b.* Paragraph "a" no longer applies effective June 21, 2010. An employer that has relied on the bounty rule to exclude bounty payments from covered wages shall have until September 1, 2010, to bring payroll processes and prospective wage coverage into compliance. No retroactive adjustment shall be required for employers that relied on paragraph "a" for periods prior to September 1, 2010.

ITEM 6. Rescind and reserve rule **495—9.3(97B)**.

ITEM 7. Amend subrule 11.5(2), introductory paragraph, as follows:

**11.5(2) Bona fide retirement—licensed health care professionals.** For retirees whose first month of entitlement is no earlier than July 2004 and no later than June ~~2010~~ 2012, a retiree who is reemployed as a "licensed health care professional" by a "public hospital" does not have a bona fide retirement until all employment with covered employers is terminated for at least one calendar month. In order to receive retirement benefits, the member must file a completed application for benefits form before returning to any employment with a covered employer.

ITEM 8. Adopt the following new subrule 11.5(5):

**11.5(5)** *Members of the national guard who are called into state active duty.* Effective May 25, 2008, members of the national guard who are called into state active duty as defined in Iowa Code section 29A.1 in noncovered positions during the required period of complete severance will not be in violation of the bona fide retirement requirements of Iowa Code section 97B.52A as amended by 2010 Iowa Acts, House File 2518, section 33.

ITEM 9. Adopt the following new paragraph **13.2(9)“c”**:

c. A presumption shall exist that a special service member contracted a disease while on active duty only if the disease is defined by Iowa Code section 97B.50A(2) “c” as amended by 2010 Iowa Acts, House File 2518, section 31. If a presumption exists, IPERS may, in making its determination as to whether a disability was incurred while the member was on active duty, go forward with evidence to rebut the presumption. IPERS can rebut the presumption when credible evidence exists to the contrary or when the requirements are met in Iowa Code section 97B.50A(2) “c” as amended by 2010 Iowa Acts, House File 2518, section 31. Under no circumstances shall the burden of proof shift from the special service member to IPERS.

ITEM 10. Amend subrule 14.5(2) as follows:

**14.5(2)** *Multiple beneficiaries.* Where multiple beneficiaries have been designated by the member, payment, including the payment of the remainder of a series of guaranteed annuity payments, shall be made in a lump sum only. The lump sum payment shall be paid to the multiple beneficiaries in equal shares ~~unless a different proportion is stipulated.~~

ITEM 11. Renumber rules **495—14.16(97B)** and **495—14.17(97B)** as **495—14.17(97B)** and **495—14.18(97B)**.

ITEM 12. Adopt the following new rule 495—14.16(97B):

**495—14.16(97B) Required minimum distribution (RMD) basic calculation.**

**14.16(1)** The RMD for a member who retired under an option with a lump sum death benefit and died after the member’s required beginning date (RBD) is calculated as follows:

- a. Step 1. Determine the number of payments remaining for the calendar year in which the member died. The current month’s payment is not used in this calculation.
- b. Step 2. Multiply the number of remaining payments determined in Step 1 by the gross amount of the member’s last monthly payment to get the RMD amount. If the lump sum death benefit is less than the RMD, then the RMD is the lump sum death benefit amount.
- c. Step 3. Determine the total non-RMD amount by subtracting the RMD as determined in Step 2 from the lump sum death benefit.
- d. The eligible rollover amount is the total non-RMD amount as determined in Step 3.

**14.16(2)** In order to allocate nontaxable amounts between RMD and non-RMD, the calculation is performed as follows:

- a. Nontaxable amounts are allocated first to the RMD portion of the lump sum death benefit.
- b. If the nontaxable amounts are greater than the RMD amount, the remaining nontaxable amounts are allocated to the non-RMD portion of the lump sum amount.
- c. If the nontaxable amounts are less than the RMD amount, the remaining portion of the RMD amount is composed of taxable amounts.

ITEM 13. Reletter paragraphs **16.2(3)“n”** to **“p”** as **16.2(3)“o”** to **“q.”**

ITEM 14. Adopt the following new paragraph **16.2(3)“n”**:

n. Service credit that is purchased during the period when the member is married to the alternate payee shall be added to the numerator and the denominator of the service fraction when calculating the service factor pursuant to a domestic relations order. Service credit that is purchased during a period when the member is not married to the alternate payee shall only be added to the denominator of the service fraction when calculating the service factor pursuant to a domestic relations order. Under no

circumstances shall the number of quarters in the denominator be more than the number of quarters used to calculate the member's benefit.

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